IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1374 OF 1992

M/s.Dinesh International .. Petitioner.
V/s.
Union of India & Others .. Respondents.

Mr.Ashok Singh i/b. Haresh Mehta & Co. for the petitioner.
Mr.R.V. Desai, senior counsel with Ms.S.V. Bharucha for respondent Nos.1 to 3.
Mr.U.J. Makhija i/b. Mulla & Mulla for respondent Nos.4 and 5.

AND
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2716 OF 1998

Dinesh, son of Ghanshyamdas Bhartiya .. Petitioner.
V/s.
Central Warehousing Corporation & Others .. Respondents.

Mr.I.P. Bagaria for the petitioner.
Mr.S.M. Shah with Mr.D.A. Dube for the respondents.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 17TH MARCH, 2005.

P.C. :

1. Heard the learned counsel for the rival parties.

2. This petition is essentially challenges the order passed by the Bombay Port Trust (BPT) dated April 6, 1992; whereby BPT has honoured detention

certificate but according to the slap fixed by them as reflected in their letter dated April 6, 1992; which according to them is their standard formula for granting remission in BPT charges.

3. The first prayer in the petition is directed against the legality and validity of the said formula adopted by the Bombay Port Trust as reflected in the letter dated April 6, 1992; contending that the same is in breach of Section 53 of the Major Port Trusts Act, and that the Board has no such power to lay down any standard formula. This contention raised in the petition appears to have resulted in granting rule. However, the learned counsel appearing for the petitioner, at this stage, made a statement that the petitioners are not interested in pressing prayer clause (a) i.e. challenge to the standard formula adopted by the Bombay Port Trust as reflected in the Annexure 'L' - letter dated April 6, 1992. Thus, prayer clause (a) needs no consideration.

4. The learned counsel for the petitioner having not pressed prayer clause (a); proceed to urge that in view of the law laid down by the Apex Court in the case of Shipping Corporation of India Limited V/s. C.L. Jain Woolen Mills [201 (129) E.L.R. 561 (S.C.)] and Delhi High Court in the case of Om Petro

Chemicals V/s. Union of India [2002 (140) E.L.T. 353 (Delhi)], the directions be issued against the respondent Nos.4 and 5 to recover their demurrage charges from the Customs Department, since the petitioners were not responsible for detention of goods.

5. The submission made is misplaced. We had an occasion to consider the similar challenge and submission in the case of Modern Rubber Industries V/s. Union of India [2003 (154) E.L.T. 571], wherein we ruled that the orders passed by the authorities in the course of adjudication proceedings, in discharge of their duty cannot result in saddling the warehousing charges on the Customs Department unless the order is held to be malafide. In absence of proved malafides, it is for the petitioner to pay the said charges even when, ultimately the Customs Department accepts the contention of the assessee.

6. In this view of the matter, there is no merit in both the petition. The petitions are, therefore, dismissed. Rule stands discharged with no order as to costs.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)